



Joseph Segar
Speech in defense
of his claim to a seat.
1807.

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Book 5



SPEECH
OF THE
HON. JOSEPH SEGAR,
OF
VIRGINIA,

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
IN DEFENCE OF HIS CLAIM TO A SEAT IN THAT BODY FOR THE THIRTY-
EIGHTH CONGRESS.

[*From the Congressional Globe of May 21st, 1864.*]

Mr. SEGAR: In the fall of 1861 a small number of the loyal voters of the county of Elizabeth City, the county of my residence, appeared at the polls, in pursuance of a proclamation of Francis H. Peirpoint, then the recognized loyal Governor of Virginia, and cast their votes for the humble individual before you, as their Representative in the Thirty-Seventh Congress. At the time I was far away from my home, treading, for the first time in my life, the soil of New England, and not even aware that an election was in contemplation. At first, I am frank to confess, I had no purpose of appropriating to myself the intended honor, having grave doubts of the legitimacy of the Wheeling government, under the auspices of which the election had taken place. But my doubts on that point having been removed by an able argument of the late Benjamin F. Hallet of Boston, published in the Boston Post, and to which my attention was called by a distinguished member of the Boston bar, I determined finally to make claim to the proffered seat. I accordingly appeared here to do so, but the House thought fit not to admit me.

The chief objections taken to my admission were, first, the one still raised, that *all* the loyal voters of the district had not had an opportunity of indicating their choice at the polls, and, secondly, that the election having been one to supply a vacancy, it should have been held by writ of election, and not executive proclamation.

Regarding the former of these objections as not soundly taken, and regardless of the rights of the State of which he was the acknowledged chief magistrate, Governor Peirpoint issued a writ for a new election. In this second election, I beg the House specially to note, only three counties

voted—Accomac, Northampton, and Elizabeth City—and the vote cast was only 1,018, of which I received 559; and this number being a majority of the votes cast, I received a certificate of election, and a second time appeared in this Hall, seeking admission. You kept me out in the cold, Mr. Speaker, for some seven or eight weeks, but finally, either taking pity on me, or believing me entitled to membership, you kindly rescued me from my shivering position outside, brought me within these doors, and conducted me to a seat in this House of Commons of this great nation. I took the seat; and though it is not mine to boast a brilliant, I think I may not immodestly claim to have made at least an honorable record of my representative action. Elected as an unyielding Union man, I gave outspoken Union votes, having supported every vital measure of the Government for the suppression of the rebellion.

Well, sir, supposing the point then as now raised against me to have been overruled by the solemn judgment of the House, and that the principle in my case had been definitively settled, I became a candidate for re-election, was elected by a large majority, and appeared here on the first day of the session to take my seat, never dreaming that the Clerk of the last house (Mr. Etheridge) would hesitate to place my name on his list of members elect—for I had presented a clear certificate of election, and had moreover been personally assured by him that my name was actually on his printed lists, my certificate of election being (as he said) all right—and still less conceiving it possible that the House, after the action of the last session, could for a moment hesitate over my admission. And yet, how stands the case? The Clerk, at a very late hour, thought fit to erase my name from the list on which he had put it, and this House, instead of standing by the decision of the last Congress, fairly and dispassionately made, has again kept me outside from early December till the summer solstice is almost upon us. In other words, though you admitted me the last session with a vote of only three counties of my district and a vote of 559, now, when I come here with the vote of four counties and a vote of 1,300—more than twice larger now than then—your committee tell me I have no right to a seat; and while you admitted the 559 loyal voters who sent me here the last Congress to representation on this floor, you now deny it to the 1,300 who sent me to the present Congress! And what, sir, is most remarkable and not a little mortifying, many of my old colleagues who voted to let me in in 1862 refuse to admit me in 1864!

Such are, briefly, the facts of the case; and I ask the House to bear them in mind while I proceed to demonstrate, as I am confident I can, my title to the seat I claim. Of my right to it on precedent, on principle, on law, on justice, and on public policy, I have no more doubt than I have of my right to my share of the sunlight of heaven. And if my good friend from

Massachusetts, the chairman of the Committee of Elections, will but give me a patient hearing, (as I am sure he will,) I am not without hope of convincing him, not only that the conclusion of his report is erroneous, but that, on the very principles of his own report, I am entitled to a seat in this body.

I rejoice, Mr. Speaker, that this case comes up now disembarassed of all complications. It is admitted in the committee's report that there is such a political organization as the State of Virginia—an admission for which I heartily thank them, for even that has been questioned in some high quarters; that there is such a district as the First Congressional District of Virginia, duly laid off under an apportionment by the census of 1860; that the election was regularly held at the times and the places appointed by law; and that I have a proper certificate of election from the officer charged by law to grant it. So that there is but a single point in the case to be considered, so far as the Committee's report is concerned, and that point is, that all the loyal voters of the district, not having had an opportunity of reaching the polls, I cannot be said to be their choice, and therefore should not be admitted, for it is possible (they say) that some other person *might* have been preferred as Representative. I think I have fairly stated the point in the committee's report, and on that point I take issue with them. I maintain exactly the reverse of the committee's reasoning: that both principle and precedent are against the conclusion of the committee, and in favor of my admission.

I hold, first, that under a precedent long ago set, (as far back as the year 1826,) it is not competent for this House even to inquire whether or why any of the voters of my district, or any other district, were absent from the polls. I refer to the case of Biddle and Richard *vs.* Wing, (Contested Elections in Congress, p. 504,) in which it was charged by one of the claimants, Richard, that a sufficient number of his friends had been intimidated from voting to defeat his election; in other words, that but for actual intimidation practised at the polls a sufficient number of his friends would have voted that did not vote to have given him a majority of the votes cast, and thus elected him. It was ruled that this inquiry could not be gone into at all. I quote from the case:

"The Committee are of opinion that the duty assigned to them does not impose on them an examination of the causes which may have prevented any candidate from getting a sufficient number of votes to entitle him to a seat. They consider it is only required of them to ascertain who had the greatest number of votes actually given at the election."

And again:

"The law appoints a particular time and place for the expression of the public voice; and when that time is past it is too late to inquire who did not vote or the reason why."

The only question now to be determined is, for whom the greatest number of the legal votes have been given."

And further :

"In all cases of contested elections, where the question depends upon matters of fact, much difficulty is to be expected in coming to a decision; and, where there is reason for doubts, a disposition is often felt to return it to the people. This however, ought not to be done when it is possible to ascertain what the result has been. When a people, in the exercise of their constitutional rights, have gone through with the process of an election, according to the prescribed rules, they ought not to be deprived of the advantages accruing therefrom but for the most substantial reasons. No doubts which are capable of being solved ought to be permitted to operate against them. Indeed, nothing short of the impossibility of ascertaining for whom the majority of the votes have been given ought to vacate an election; more especially if by such decision the people must, on account of their distant and dispersed situation, necessarily be unrepresented for a long period of time. The committee, being of opinion that in this case an election has been made, have proceeded to ascertain on whom the choice has fallen."

Now, if ever a principle was set out with a pencil of light, here it is; and what is it? It is this: that so important is the elective privilege that an election should never be set aside except when there is an absolute impossibility of ascertaining where the majority of the votes actually given lies; that so vital is the right of representation in popular government, that it shall never be lost where it is possible to maintain it; that those who do go to the polls shall not be deprived of the benefits of the inestimable privilege by those who do not go or could not go; that no matter how many are absent from the polls, those who are not absent shall come in for freedom's great vital right of representation; and that however great the absence may be it shall not be taken into account, so as to interfere with the rights of non-absentees, unless there has been such general fraud or corruption as would vitiate the whole election. This is the principle laid down by the committee of 1826, and it is a sound one; it is founded pre-eminently in reason and in wisdom; it institutes no superfluous inquiry; it is plain and incapable of perversion; it raises the simple and disembarassing questions, who did vote, and who received the greatest number of votes given—an inquiry sufficient, where there is no absolute and general fraud, for all the practical and useful ends of the elective franchise; it preserves to us unimpaired that essential principle of all free government, that taxation and representation should be "now and forever, one and inseparable;" and it is deep-founded in the certainty and purity of the elective franchise—two qualities without which the privilege were as worthless dross. It discloses a rule which, from its simplicity and consequent incapability of fraudulent perversion, is suited for all times and all circumstances; for times of high party excitement and times of politi-

cal quiet; for times of degeneracy and times of lustrous virtue; for "piping times of peace" and dark times of "grim-visaged war." And the best evidence of its soundness is that it is recognized in the election laws of every State in the Union, and has been from the very birth-hour of the Union to this bleeding hour of civil strife.

Now, I ask my clear-headed friend from Massachusetts why he should not apply this philosophical reasoning of the Congress of 1826 to my constituents and their humble Representative? Is there not a peculiar, and even touching, applicability to their case? Sir, it looks to me as if the committee of the 19th Congress had seen far down the vista of time, and, glancing with prophetic ken at the dark scenes of this unhappy rebellion, had fixed up (if I may so speak) a set of maxims for our guidance in the very case before us.

Is not the "elective privilege as important" to my constituents as to any other people? Have they not, like yours, Mr. Speaker, and those of other Delegates here, need for a Representative? Have they no rights to be shielded, no interests to be watched after?

Sir, when the people of my district went to the polls, were they not there "in the exercise of their constitutional rights?" And did they not "go through with the process of the election according to the prescribed rules?" The committee admit all this. Why, then, (to apply the just sentiment of the committee of the Nineteenth Congress,) "should they be deprived of the advantages accruing therefrom?"

And then, if you say that the votes of those loyal men who could go and did go to the polls shall go for nothing, do you not disfranchise all the loyal men of the district "of representation for a long period of time"—at least until "this cruel war is over?"

And is there any doubt who received the greatest number of votes, and was, therefore, elected? The committee make no such pretension. I say, therefore, that, an election having been made, and the result having been ascertained beyond cavil, this House, on the principle of *stare decisis*, has no just authority to do anything but ascertain "on whom the choice has fallen," and that, consequently, it has no right to open the question of who were absent from the polls, or of the reasons of the absence.

I might here rest my case, and demand my seat on the precedent set for our imitation by our predecessors of a golden era. But, as it is insisted that a rule is now to be set for all time, I cannot forbear to look for a moment, by way of contrast, into the soundness of the one commended to us by the present committee, of inquiring into the number of absentees and the causes of absence, as a means of ascertaining the popular choice. Can any one fail to perceive that this modern rule—one of the offsprings of this hated rebellion—is utterly unreliable? Sir, you must either require the whole vote of a district to be out or within reach of the polls, or you must take the majority

of the votes cast as an exponent of choice, or you may not hit the choice. I will illustrate by two of the very cases referred to in the report of the committee as illustrative of the soundness of its position. First, the case of Mr. Clements, of Tennessee: Mr. Clements received in all the counties of his district 2,000 votes out of the usual vote of 6,000, one, county, Warren in rebel occupation, not voting. Now, who knows but that if this county of Warren had voted there would have been a majority against Mr. Clements? And so in the case of Mr. Hahn, of Louisiana: he received in his district 2,799 votes, all others 2,319, a difference of less than five hundred. But the parishes of St. Mary's and St. Martin's, being infested with rebel guerrilla bands, did not vote. Now *non constat* if these two parishes had voted, that Mr. Hahn would have been elected at all. The two parishes might have put the majority against him. And does not this show that the moment you begin to look into the matter of absent voters you may miss the object you aim at, to wit, the ascertainment of the popular choice, and that there is but one safe and certain rule, to wit, that which has been adopted by every State in the Union, of taking a majority or the greatest number of votes actually cast, without regard to absentees at all?

Sir, there is no other sound rule, and the proof of it is, that the moment you departed from the good old practice which has prevailed from the foundation of the Government until this rebellion began, of adopting the majority of the cast vote as the test of election, and relying on the official returns of the proper State officers as conclusive until fraud is alleged and proved, you involved yourselves in confusion, uncertainty, shifting decisions, and endless labor for your Committee of Elections, and the sooner you return to the old system, the sooner you will place the elective franchise on the most respectable and the securest basis, and the sooner you will take from the Committee of Elections the stone of Sisyphus, which it has been heaving up the mountain from the first moment that this innovation on the elective principle and the old practice began.

My friend from Massachusetts, I know, will answer this argument and all others militating against his peculiar theory by saying that each House of Congress is the judge of the returns, qualifications, and elections of its members. True; and under that province this House may eject any member of the body, however legally elected, and there would be no redress except by another appeal to the people, and then another ejection might ensue, and so on, until a bare quorum would be left; so that this admitted function of Congress is to be exercised with a sound discretion, intelligently, rationally, honestly, not arbitrarily. Then, sir, holding this power by the tenure of sound discretion and not arbitrary caprice, ~~er-~~ Congress so to exercise it as to subvert one of the noblest principles of American freedom, and more especially when under our Federal system

there can be no extinction of a State except in the mode prescribed by the Constitution, and when, of course, the principle of representation must survive wherever there is a loyal population to vote? And until Congress shall intervene and take charge of this whole subject of elections, as it may rightfully do, ought not the State laws and State usages to prevail and control? Ought not, at least, this small respect to be paid to State rights and State dignity? Ought you, in the absence of United States laws, to go behind the State laws and State returns? Resume, if you please, your rightful control over Federal elections, but so long as you leave this matter of elections to the States, respect them, and the regulations which you yourselves invited them to adopt. And does not my friend from Massachusetts perceive that if we establish the modern practice of opening the whole subject of elections in each case without regard to State laws and State returns, there is danger that, in times of high party excitement and of demoralization, a broad margin may be left for political intrigue, and seats in Congress be given out and taken away by arbitrary party requirement? And does he not see the necessity, yea, the high policy, of not departing from the established precedents in this important matter of elections? Sir, in no interest of society is stability more necessary than in that of elections. Stability is indispensable there; and I will add that it is more necessary in reference to the elective franchise than it is to the institution of property itself, because the elective franchise is the source of the rights of property, and of every personal right, and not only the source, but the shield. I am looking ahead to the time when we may not have a Committee of Elections composed of as able and as honorable men as those of the present committee.

Now, I ask my friend from Massachusetts, in all respect, if this precedent of the days of yore—those pure and happy days of the Republic, the days of the second Adams, whose administration was a bright era of our land, and was as faultless and as pure as that of Washington himself—is not one that comes to my relief on the present occasion, entitling me to a seat with him in this Hall? In the face of this precedent, can he do anything more than inquire whether I had, or had not, the majority of the legal votes cast?

But, sir, leaving this precedent out of view, are there no other precedents to entitle me to membership in this body? I marvel much, Mr. Speaker, that the Committee of Elections, while they were looking up the precedents and declaring that all precedent was against me, did not think of one of very recent origin, and perfectly in point, the case in the last Congress, of the unlucky individual whom you have so long kept out in the cold, my humble self. I can only account for the omission by the fact that I was so silent and obscure a member that gentlemen have

actually forgotten that I was a member at all. And so, sir, I crave leave to refresh the recollection of the House, and to remind it (as the Journal will show) that I was a veritable member of the Thirty-Seventh Congress, and that I obtained my seat in the very teeth and in defiance of the very principle on which the committee now seek to exclude me, and on the very state of facts now existing. My friend from Massachusetts will say, I suppose, that his committee, being unable to agree, did not make report of the specific objection now taken, and so asked to be discharged from the further consideration of the subject, leaving the House to decide the matter for itself. True, sir; but the committee reported the facts of the case, as in the present instance, leaving the House to decide the principle, and to apply it, without regard to any opinion of the committee, and the House did decide and apply it.

After stating that but three out of seventeen counties voted, and but one precinct in one of those three, the committee give the following results :

"Total vote cast	1,018
For Joseph Segar.....	559
For Arthur Watson.....	438
All others.....	21;"

making my majority over Watson 121.

In the present case the committee report twenty counties as composing my district, and a vote in four counties only, as follows :

"In Accomac.....	1,120
Northampton.....	305
Elizabeth City and York.....	242

Total number of votes..... 1,667:

Of these Mr. Segar received about 1,300 votes."

The only material difference is that in the first election seventeen counties composed the district, and only three voted; while in the late election twenty counties, under the new apportionment, formed the district, and only four voted. So that there is no substantial difference, in principle, in the two cases.

True, the addition of three counties to the district increases its population, but that addition is more than offsetted by the increase in the aggregate vote cast and the increase of my own vote in the last election over the first.

The able chairman of the committee will argue, I can foresee, that this case of mine is not a precedent. He will tell you that when it was up in the last Congress he declared that the House might, without interfering with any position of the committee, either admit or reject me. But I hold

it to be indisputable that the House in admitting me did so either as matter of personal compliment or on principle.

But it could not well have been on personal compliment ; for I suppose that it is my hard lot to be one of the least popular members that ever sat in this body. That, however, is more my misfortune than my fault ; for an excessive infirmity of vision, besides giving me an appearance of almost clownish awkwardness and a seeming stiffness, much disqualifies me for recognizing faces and associating faces and names ; and so, sir, I am debarred the pleasure of an extensive acquaintance with the members of the House, which I deeply regret, for I know I am socially and personally much a loser by the exclusion inflicted by this unhappy defect.

So the House must have voted on principle, and not on mere compliment. Well, sir, all I have to say is, that if you voted on principle, stand by it, for principle is a thing to be stood by ; and if you voted for me for compliment's sake, please pay me the compliment once more, for I am as worthy now as then. The objection, then, that is taken to my admission now is the identical one that was in the mind of the House when I was admitted in 1862, and which, by my admission then, was expressly overruled by a conclusive vote. Nay, more. My case is far stronger now than it was then. Then, but 1,018 votes were cast in my district ; now, there are near 1,700. Then, I received only 559 votes ; at the late election, 1,300. So that while you gave my district a Representative with a vote of just 1,000, you propose to deny it one with a vote of 1,700 ; and, while you awarded me my seat when I had only 559 votes, you talk of rejecting me when I received 1,300 !

Now, sir, I do not mean to say whether consistency is a jewel or not, or whether it is a rare jewel, or one worth keeping bright ; but this I do aver, that my case was decided, and I think rightly decided, when, on the 6th of May, 1862, I was admitted a member of the Thirty-Seventh Congress, because then there could not have been a single conceivable objection to my admission but the one now urged—that the whole vote of my district was not in reach of the polls. And I maintain, further, that the faith of this House is most solemnly plighted to yield me and my constituents the seat we claim. You cannot reject me without breaking your faith. Declare me elected to one Congress and rule me out of another, when the principle is identical, and the facts even stronger in the last case than in the first ! Is that the way you keep sparkling the jewel of your faith ? Is that the way this honorable body, the representative of the morals of the nation, cherishes its consistency and its honor ? Is this the example the law-makers of a great and proud nation are to set to the citizen masses ? Invite me, on the faith of your past action, into a most laborious and expensive canvas, and then turn me adrift, to be the sport of the en-

vious and malicious, and an especial object of confederate taunt! Sir, I trust this House will bring upon itself no such reproach. Let it be just to itself and just to me, by re-inscribing my name on the list from which the late Clerk so improperly struck it off.

But is there no other precedent of the like purport? Why, sir, my friend from Kentucky, Mr. Casey, was allowed to take his seat in the Thirty-Seventh Congress with about seven hundred votes, just about half of my vote; and when, as we are assured by an honorable gentleman now a member from that State, [Mr. Smith,] that a considerable portion of Mr. Casey's district was held by rebels, and could not reach the polls. How is it, Mr. Speaker, that you "make fish of one and flesh of another?"

I could bring up many other instances of gentlemen reaching the honors of this floor—some now upon it—who received a very inconsiderable proportion of the votes of their districts, but I have cited examples enough to show that when the committee said that the precedents are all against me they were decidedly wrong. I insist that precedent, both old and new, time-honored and recent, lights my way to a seat in this body, as plain as the road to the parish church. Indeed, after the vote of the last Congress in my favor, the question of my admission is not now an open one. On the principle of *stare decisis* it cannot be re-opened. To all intents and purposes it is *res adjudicata*.

But a large portion of my district being in rebel possession, and not voting, the committee argue that I cannot be said to be the choice of the loyal voters of it, for (may be) if the loyal men in the counties in possession of the rebels *had* voted I might not have had the majority. How did the committee ascertain that there are *any* loyal men in that portion of the district which is in the rebel lines? How do they know that there is one single loyal man there? The *presumption* is that there are *no* loyal men there. When a portion of a State rests under rebel rule, civil and military, the presumption of common reason is that *all* its people, or certainly most of them, are rebels; for if they prefer the Government of the Union to the rebel government, why have they not left the one and sought the other? There is not a county in my district that is not in easy reach of the stars and stripes; and there is not a loyal man in any one of those counties that could not in a few days put himself within the Federal lines and the protection of the United States. Why have they not left rebeldom and sought protection under the old flag? I, for one, fled from the one and sought the other. I had made up my mind, immovably, that I would under no circumstances live under treason's government; and so I fled from the very heart of rebeldom, and fled, and fled on, until I caught sight of that glorious flag which is power and strength and protection wherever its proud folds are flung to the breeze. If there are any loyal men in the rebel-held

portion of my district why did they not, as others did, "come out from among the wicked?"

The argument, then, of the Committee of Elections, that I am not entitled to my seat because there was a greater portion of loyal men in the rebel part of the district than in the loyal part of it, is based altogether *on a naked assumption*. They do not state an ascertained fact, but put forth only an airy speculation. They *assume* what they ought to *prove*. They forget that the *onus probandi* is on them. I come here, sir, with a proper certificate of the proper returning officers of my State, which raises at once the presumption that I had all the votes necessary, both in quantity and quality, to elect me; and I come here also with the presumption in my favor that all those in rebel lands are rebels; and yet these presumptions, these most rational presumptions, to the benefit of which I am entitled as against any contestant, and indeed against all the world, until legitimately repelled, are to be rebutted and set aside, how? By facts and proofs? No, sir, by another and an inferior, less rational presumption—by a naked speculation!

Now, sir, I am not much of a lawyer, but I did learn this principle in the elementary lawbooks, that where a presumption arises in favor of a party, that party is entitled to the benefit of it until it is rebutted and the contrary made to appear. Now, I ask, in all candor, have the committee fairly and squarely rebutted the presumptions with which I come here in my favor? I am here, as I just said, with the presumption, first, arising from a proper certificate of election, that I had all the votes necessary to elect me; and I am here with that other most rational presumption, that in a rebel land there are but few loyal men to break the monotony of treason's song; and how, I ask again, do the committee rebut these presumptions and take from me the benefit of them? Why, sir, by the bold and bald assumption that as there were 1,700 loyal voters in the counties that did vote, there must be a proportional number of loyal men in those that did not vote! And having settled the basis of the proportion, they work it out, by the the principles of Cocker and Pike, that as there were 1,700 loyal votes in the voting counties, there must be at least 5,100 in the counties in rebel possession and not voting! There are (to put the argument in semi-syllogistic form) 1,700 loyal votes in the four counties within the Federal lines that voted: *ergo*, there are 5,100 in the sixteen counties in the rebel lines that did not vote!

On what principle is it that the committee make the loyalty of the four counties that voted the basis for calculating the loyalty of the sixteen counties that did not vote? The circumstances of the two are totally different. The counties of Accomac, Northampton, Elizabeth City, and York, early came back within the blessed scope of the Union. The proud emblem of our national sovereignty and power, as it streams from the liberty-poles at

Fortress Monroe, and Fort Wool, and Camp Hamilton, and Yorktown, and Williamsburg, can be seen by the naked eye of the people of the counties of Elizabeth City and York as each fold flutters in the breeze. The two large counties of Accomac and Northampton, in six months from the date of Virginia's secession, came, by the expedition of General Dix, within the protection of the Union, and at once acknowledged its supremacy. Not so with the rest of the district. The Federal arms had made no lodgment there. Practical protection had not been guaranteed or offered. The stars and bars, not the stars and stripes, floated there, and there rebellion and treason still their vigils keep. Now, sir, in such entire dissimilarity of circumstances, how can you reason from the loyalty of the people in the protected, loyal portion of my district, to the loyalty of those in the unprotected, rebellion-bound portion of it?

Five thousand one hundred loyal voters in the portion of my district in occupancy of the rebels! Sir, I wish in all my heart it were so. It would be *imperium in imperio*. It would be a power in that section more potent than the power of the rebellion itself—a power that might “beard the lion in his den.” It would put the Union party there long way ahead of the secession traitors. In the whole of this portion of my district, the entire vote in the presidential election of 1860 was 7,840. The loyal vote in it now, say the committee, is 5,100. So that according to the committee's reasoning it has 2,745 more loyal than disloyal voters—a thing which cannot be predicated of any congressional district in Virginia. The same reasoning, as I have ascertained by actual calculation, would make the number of loyal voters in the whole State 54,400, and of the disloyal 44,019, thus making the loyal vote greater by 10,381 than the disloyal—a result which will, I am sure, expose to the chairman of the Committee of Elections the entire fallacy of the calculations on which he proposes to oust his friend from Virginia from a seat beside him. Five thousand one hundred loyal voters in this the most “Copperhead” region of the whole State! Sir, I tell you, in all candor, that the counties outside the four that sent me here, are the very last locality in my State to find loyal people in. It was in the soil of those counties that Mr. Calhoun sowed broadcast those seeds of nullification and sectionalism which have ripened into a fruitful harvest of rebellion and treason. I have often heard it remarked, and the remark was but too true, that there were more disciples of the Calhoun faith in the first congressional district of Virginia than in all the State beside. I know it to be so. I was often the Whig elector in that district, was the representative of a portion of it in the State Legislature for more than twenty years, and I speak from personal knowledge when I say that there has been from the time of Mr. Calhoun's celebrated Fort Hill manifesto in 1831, less attachment to the Union of these States in this than any other portion of the Old Dominion. It has been a

soil more fruitful of a dividing and alienating sectionalism and of disunion doctrine than any in this whole land, except peculiarly traitorous South Carolina. Look at the antecedents! Sir, when I first knew the district, it was represented in Congress by old Burwell Bassett, a politician of the extremest State-rights faith. Soon after came Richard Coke, an ardent nullifier, whose Magnus Apollo was John C. Calhoun. Next came Henry A. Wise, who ran against Mr. Coke on the avowed ground of secession against nullification—the secessionist against the nullifier. True, Mr. Wise redeemed himself not a little in the dark times when executive prerogative in the hands of Andrew Jackson was laying foul hand on the most sacred principles of the Constitution. He gallantly stood up for the “union of the Whigs for the sake of the Union.” He even said that “office could not add a cubit to the stature” of Henry Clay—a tribute as righteous as beautiful, and that will be echoed back by the wise and good of the world, “to the last syllable of recorded time.”

But alas! Mr. Speaker, *quam mutatus ab illo!* Mr. Wise relapsed, and beat badly Hill Carter, a gentleman of the olden standard, and an uncompromising old-line Whig of the Henry Clay and Daniel Webster school. I shall be no further his historian, but bring to your notice his successor, Thomas H. Bayly, a man of noble parts of both heart and head, but of extreme State-rights and southern proclivities, and one of the most enthusiastic admirers of Mr. Calhoun. He was succeeded by a gentleman well known to many members of this body—Muscroe R. H. Garnett, whose political notions were at war from his boyhood with all national statesmanship, who regarded a labor to subvert our blessed Union a labor of patriotism and of duty, and who since his pernicious doctrines eventuated in fragmenting that noblest fabric of human workmanship, held a seat in the rebel Congress. From such antecedents, Mr. Speaker, you can scarcely expect to find in a certain part of my district the army of Union men which the Committee of Elections have so kindly assigned to its custody. Why, sir, even the old-line Whigs of the western shore portion of my district have forgotten their instincts. The Critchers and the Lewises and the Saunderses and the Smiths and the Roanes and the Laeys and the Carters and the Wilcoxes and the Shields and the Howards and the Greshams and the Cloptons and the Fleets, and hundreds of the like quondam politics, who shouted for “Tippecanoe and Tyler too,” who sprung every nerve to make President noble, magnificent, immortal Harry Clay, who admired Daniel Webster as an intellect that any country might be proud of, who looked upon Millard Fillmore as one of the most unselfish, most patriotic, and most sagacious statesmen the North has ever given to our common country, and who “did yeomen’s service” in the cause of Bell and Everett at the last presidential election as being *par excellence* the Union ticket: all these, and thousands of others, the very elite of

Whig chivalry in district No. 1, have gone off on "the pride of former days." They "kept step to the music of the Union," and sang anthems to the Union while Virginia and the Union were together, but now "the harp of Tara sleeps on Tara's walls." Roused up by the bugle-blast of their native land, they threw away the clarion with which they were wont to ring out joyous notes for the Union of their Washington. Sir, there never was a class possessing in reference to their State—their *natale solium*—more of the Cavalier spirit than do my old comrades, the old-line Whigs of Northumberland and Lancaster and Richmond and Westmoreland and King George and Essex and King and Queen and Gloucester and Matthews and King William and Middlesex and Caroline and James City and Williamsburg and New Kent and Charles City. They loved the Union while their State and the Union could go on harmoniously together; but when conflict came, they became clannish, and, taking a position for their loved Old Dominion, they soliloquized, each to himself, in the language of Rhoderick Dhu's resolve:

"This rock shall fly
From its firm base as soon as I."

And hence it was that, without reference to old party, they united almost to a man in ratifying the secession ordinance of their State.

Why, sir, all the blockade running and carrying of supplies to the rebels from across the Potomac takes place through the very heart of the non-voting portion of my district. Could this contraband passing and traffic be well carried on if there were scattered over it 5,100 loyal voters? The two recent raids upon that land of submissive loyalty, the eastern shore of Virginia, emanated from the county of Matthews, one of the non-voting counties, and in which I do not believe there is one loyal man or woman. And throughout the western shore portion of the district a merciless conscription has sent nearly the whole of the arms-bearing population to the camp and the battle-field.

Sir, I am not singular in these opinions. In confirmation of them I submit a recent letter from Hon. E. P. Pitts, the able and loyal judge of the eastern shore circuit:

"Yours, asking my opinion of the loyalty of the counties of the first congressional district of Virginia, or that portion of it in rebel possession, has been received. I have resided in that district all my life, and have not been an inattentive observer of public affairs. I do not believe there are one hundred loyal voters in the portion of the district to which you allude, and if there is one he is unknown to me. That district has been under the control of the Calhoun school of politicians, and there are secessionists in it—and those not a few—of thirty years' standing. It would be surprising if there were many loyal votes to be found there, at least till under Federal control."

Confirmatory of Judge Pitts's opinion is a letter from T. R. Bowden,

Esq., a son of the late Senator Bowden, and Attorney General of Virginia, which I beg to read to the House :

NORFOLK, VIRGINIA, *April 6, 1864.*

MY DEAR SIR: Your letter of the 5th instant, asking my opinion of the strength of the loyal vote of the first congressional district of Virginia, has been received. In reply, I have no hesitation in stating that I believe the county of Accomac comprises nine-tenths of the loyal voters of the district, excepting the county of Northampton, in regard to whose loyalty I am not advised.

My reasons for this opinion are based upon the following facts :

That in the county of King and Queen every vote cast was given for Dr. Richard Cox, the unconditional secession candidate, who voted for the ordinance of secession in the Richmond convention "from first to last." In this county I am very well acquainted, my mother being originally from it. It polls 600 votes, and I have not been able to hear of the first loyal man residing there. Essex county, adjoining, is in the same way. Matthews and Middlesex comprise another district, which sent delegates to the Richmond convention. Mr. R. L. Montagne (now a member of the rebel congress) was almost unanimously elected to represent them. There were but two who voted against him ; one of these died in Salisbury prison, and the other is now confined in Richmond.

Gloucester county sent Mr. John T. Seawell to the convention. He was one of the original secessionists. Gloucester has not three Union men in her borders. Save the military, I doubt if there be one. My father was attending court in that county when the news came that Virginia had seceded, and being a notorious Union man, left the county in great haste.

On the Peninsula (with the exception of three who reside near Williamsburg) I do not know a Union man who presses its soil. There may be a few, but it strikes me they would have all left when McClellan evacuated the Peninsula, knowing the imminent danger they were in.

In regard to the counties in the northern neck, I am not personally acquainted, but am satisfied from reports that they are equally as destitute of any Union sentiment as those I have mentioned. They did not poll forty votes against the ordinance of secession.

In conclusion, I would remark that the first congressional district of Virginia is notoriously ahead of all others in devotion to secession. It furnished more original secession delegates to the Richmond convention, voted more unanimously for the ordinance of secession, and has given a more uniform, hearty, and zealous support to the rebellion than any other in the State.

These are my views. I give them frankly and unreservedly. If you deem them of any service, you are at perfect liberty to use them.

Very truly yours,

THOMAS R. BOWDEN.

Hon. JOSEPH SEGAR.

And a prominent citizen of Lancaster county, Wm. N. Harris, Esq., who left that county because it was no place for a Union man to live in, assures me that scarcely a Union man is to be found in the whole northern neck of Virginia.

Now, I ask my friend from Massachusetts, how he expects to find

among such a people, at this hour of peculiar estrangement, 5,100 loyal voters? Sir, "you may call spirits from the vasty deep, but will they come?" The 5,100 loyal men are not there. They exist only in the fabulous comparisons of the committee. Instead of that large number, I am satisfied there are not 250 loyal men in all that portion of my district that failed to vote at the late election. I do not mean to say that there will be no returning loyalty there, for I am persuaded that when our armies shall have possessed this region so that those who shall return to their homes may have assurance of security, thousands of the small farmers and mechanics and working men will, as it was in the counties of Elizabeth City and York, joyfully wend their way back to the hearthstones they love. But at the time of the late election, I know I do not err when I say that not 250 loyal men were there to vote. But say there were 500, or 800, and still it will be manifest that I received a majority of the loyal votes of the whole district; and a majority *of the loyal vote*, as I understand, is all the committee require.

Now, sir, I appeal to my friend from Massachusetts, if I have not made good my position, that, on the principles of his own report, I am entitled to a seat in this body? Let it be borne in mind that the Committee of Elections do not require me to have received a majority of the entire vote of the district. They do not estimate for the disloyal voters, for disloyal men are not expected or allowed to vote. The military power has been even used to exclude them from the polls. All that is required of me, I repeat, is to show that I received a majority of the loyal votes of the district; and I submit it to the House if I have not so made it appear.

But, sir, concede that there are the 5,100 loyal votes assumed by the committee, and I contend that on all principle, and in all reason, I am to be credited with that entire vote, just as much as if it had been written down on the poll-books for me.

Mr. Speaker, in many cases in practical life, as in law, finite beings must act upon rational presumptions, because they cannot always have the solutions of fact.

Now, sir, I hold that one of the most rational presumptions that the mind of man can conceive, is, that those loyal men in my district who could not reach the polls would ratify the choice of their more fortunate brethren in loyalty who did reach them. Is there anything more consonant with reason, or, if you please, the instincts of the human constitution? Why, what do people ordinarily want a Representative for? Is it not to have their rights and interests looked after and protected? Suppose, Mr. Speaker, that in your absence some considerate person undertakes to attend to some important matter of interest for you—saves, for

example, the sacrifice of your property—is it not the most rational supposition in the world that you would ratify the action of that considerate person, and give him your thanks besides? And is not this the very case between myself and the loyal voters who could not reach the polls and more especially when what little capacity I may possess to serve them is as well known to every man in the district as the road to mill? Will not this be their reasoning: “Well, we couldn’t get to the polls ourselves, but we are glad our loyal brethren elsewhere did get there to elect a good loyal man to look out for us and help bring this unhappy war to a close?” If they would not so reason they would falsify all the instincts of our nature.

Sir, this presumption that those loyal voters of my district who could not reach the polls would approve, ratify, and even rejoice at the choice made by their more fortunate brethren who did is so strong, so rational, so instinctive that it ought to prevail, and I ought to have the benefit of it until by some popular loyal demonstration to the contrary the presumption is overturned. I appeal to the House if this is not legitimate logic.

Why call for positive proof that I am the choice of the loyal absentees, when, on every just principle, I cannot but be that choice?

Mr. Speaker, I am as well satisfied of it as I am that death awaits all mortal flesh, that, if the truth could be ascertained, there is not one loyal voter in the whole of that portion of my district outside the Federal lines that would not accept me unhesitatingly as his Representative in Congress. And why deal in mere technicalities and non-essentials at this trying hour when the life of the nation is at stake? And why are we not taught by the enemy? They have in their congress senators and representatives from Tennessee, Kentucky, and Missouri, States that are not in the rebellion, willing, I suppose, to have aid from any and every quarter. Why will you deny us loyal men of Virginia the privilege of aiding you as far as we can in bringing this war of ruin and death to a close, and re-lifting the star-lit banner of the Union over an undismembered land? We do not claim, sir, to be master-workmen, but we shall be content to do the best we can in our humble way. Maybe we can carry to the master-craftsmen the cement to re-unite the disjointed fragments of a once magnificent fabric of liberty and Union.

It is not necessary (say the committee) that all the loyal men of a district should be at the polls to constitute an election. If they have an opportunity it suffices, because if, having the opportunity, they stay away, the doctrine of acquiescence holds. On this point I have to say that, by an ordinance of the Wheeling convention passed in August, 1861, providing that the voters of any county may vote in any other county and at any precinct, a large number of the voters within the rebel lines in my district might have voted if they had had the will and the nerve.

But they were intimidated, or kept from voting by the fear of consequences, it is intimidated. Be it so ; but according to the ruling in the case of *Biddle and Richard vs. King*, if intimidation prevailed, and voters were kept back by intimidation, the votes thus lost are not to be taken into the account, and the result is to stand on the votes actually given in.

But concede that the whole loyal vote of the rebel portion of the district was kept off by intimidation or duress or coercion : does it follow that we of the loyal portion of the district who were not intimidated or coerced are to be disfranchised of our representation in Congress ? A portion of the people of my district were intimidated from voting, or were under duress : *ergo*, those who were not intimidated, or not under duress, are to be stripped of their representative rights ! Sir, I confess to no such doctrine, because there is no justice in it ; because it is the punishing of one set of loyal men for the helpless misfortunes of another set of loyal men ; because it is blending the innocent with the guilty ; and because, above all, it is ignored by one of the fundamental and most sacred maxims of Anglo-Saxon liberty, that ought to be dear to every American heart, because at America's Runnymede, Boston harbor, it lit the fires of that Revolution which blazed out into the broad, lustrous radiance of American independence and American freedom ; and that precious, liberty-born, liberty-preserving, century-honored principle is, that there should be no taxation without representation.

Do you intend to call up from the grave to scorn you the hardy barons of Runnymede memory ? Do you mean to dishonor the memory of John Hampden, and Algernon Sydney, and Russell, and Pym, of liberty-loving England ; and of James Otis, and Uxenbridge Thacher, and Hancock, and the Adamses, and Franklin, and the Morrisises, and Patrick Henry, and Richard Henry Lee, and Laurens, and the great Washington, of our own country ? Will you fling a slur upon the good name of those thrice-gallant spirits who took counsel together on Boston Common, and there invoking the God of nations to inspire them with resolution for their great daring, ran down to Boston harbor, and at that hallowed spot threw overboard the tea which was the representative of British despotism, and the throwing overboard of which, as I have already said, kindled the fires of that Revolution which burst forth into a bright effulgence of American disenfranchisement and American glory ? Are you going to perpetrate all this profanity, as you will be doing, by coercing my constituents to bear taxation, and a heavy taxation, without that first privilege of freemen of saying whether the tax is right, what should be its amount, and how imposed ?

Mr. Speaker, do you suppose that the people of the Old Bay State, and of Virginia—for in that incipient wrestle with arbitrary power Massachusetts and Virginia stood shoulder to shoulder—cared a straw about

the two pence a pound on tea? Was there any practical oppression in it? Could not every tax-payer in the colonies have paid the tax without feeling it? What was it, then, that waked up Hampdens and Sydneys all over the "Old Thirteen," and brought the pigmy weakness of the colonies face to face with the giant power of the mother country? What was it but elevated devotion to a great and priceless principle? And shall we so shame our glorious origin, have we so soon become so degenerate as to spit upon this most cardinal, this corner-stone principle of freedom's Magna Charta? Sir, a people that gives up such a principle, that does not fondly cling to it, even amid the throes of revolution, cannot long be free. Sooner or later they will pass under the yoke. Slaves they will be, and slavery they will richly merit!

Mr. Speaker, I can conceive no possible exigency to authorize the subversion of the great principle of representation. While a remnant of loyalty is left, and until our federative system is utterly swept away, it should live as a thing too precious to let die. I acknowledge that in times of war great principles must sometimes yield to the public necessities, (though the necessity must be honest and overwhelming;) but the exigencies even of war can never call for the suspension of the right of representation in a popular Government, because it is a right of the vital essence of freedom, and the surrender of it is the virtual dissolution of all Government itself, and a remission, not to tyranny only, but to absolute despotism. There can be no safety for life, liberty, or property.

But let me submit this point in a practical view. I have before me a letter from Mr. Donn, the principle assessor in my district, which furnishes me with the Federal taxation which is imposed upon just three of the voting counties of my district:

In Accomac.....	\$7,691
In Northampton.....	3,262
In Elizabeth City.....	7,923
For incomplete assessment.....	1,000
	<hr/>
	\$19,876

There, sir, you have it in figures! Near twenty thousand dollars' tax per annum under your internal revenue laws, all of which has been actually paid in, and cheerfully paid; and yet I am told that the people who pay this heavy taxation are not to have a representative on this floor! Sir, I trust the House will not subject my good constituents to so unjust and humiliating a discrimination. I invoke for them the intervention of my friend from Massachusetts—a representative of that noble State that gave birth to the dauntless patriots who threw the tea overboard in Boston harbor. Why cannot my friend be as generous to the loyal people of my district as he was

last year to the loyal people of Louisiana, when they sent Mr. Flanders and Mr. Hahn here, and when the Chairman of the Election Committee so zealously pleaded for their admission? I quote from the Committee's report on that occasion. After urging, most strenuously, that the military Governor had the power to order an election, the report says :

"The constitutionally-elected Governor of Louisiana has turned traitor, and refused to discharge his constitutional obligations. What were the loyal voters to do? Were they to turn traitors also, or be disenfranchised?"

I ask in all deference, and in the committee's own language, "what are my poor constituents to do?" Are they to "turn traitors also, or to be disenfranchised?"

And the committee say again :

"The Constitution imposes upon the United States this obligation :

"The United States shall guaranty to every State in this Union a republican form of Government, and shall protect each of them from invasion ; and on the application of the Legislature, or of the Executive, (when the Legislature cannot be convened,) against domestic violence."

"Representation [the committee go on to say] is one of the very essentials of a republican form of Government, and no one doubts that the United States cannot fulfill this obligation without guarantying that representation here. It was in fulfillment of this obligation that the army of the Union entered New Orleans, and drove out the rebel usurpation, and restored to the discharge of its appropriate functions the civil authority there. Its work is not ended until there is representation here."

Mark the language, Mr. Speaker !

"Its work is not ended until there is representation here!"

Now all I ask is that this constitutional and generous logic be applied to the loyal voters of my district as it was to the loyal voters of the first and second districts of Louisiana. The armies of the Union have, in that portion of my district, "driven out the rebel usurpation" and restored the civil authority there. But, sir, let me remind you, in the language of your Committee, that your "work is not ended until there is representation here."

The Committee further say :

"Are this people [the people of Louisiana] to wait for representation here until their rebel Governor returns to his loyalty and appoints a day, or is the Government to guaranty that representation as best it may?"

I beg to submit the same questions about the people of my district. Are we to go without representation until "Honest John Letcher" or "Extra Billy Smith" returns to his loyalty and helps to rehoist over his State the old flag, or until Jefferson Davis and his wicked accomplices lay down the arms of treason and rebellion? Or, rather, ought not the "Government to guarantee to us representation as best it may?" That is the idea, Mr.

Speaker. Representation in some form or other—in the best form you can! Do for us the best you are able—"guarantee it to us as best you may," and we shall be satisfied.

Mr. Speaker, forbear this invidious discrimination against my constituents. Give us representation, or tax us not. And I call upon my friend from Massachusetts, the moment I am ejected from a seat here, to rise in his place and vindicate a great principle, and his own consistency, and the consistency of the House, by offering a bill to relieve the people who sent me here of all Federal taxation.

I am now to consider the last, and, I suppose the most formidable objection to my admission, though I am happy to say, it has not been raised by the Committee of Elections, and I presume accordingly, has not its sanction. It is urged in some quarters that we have no State. It was argued in the debate in the Arkansas case, that a "State should exist with a government." And I know well that some gentlemen on this floor entertain that most extraordinary idea that there is no such political organization as the State of Virginia. Well, if that is so, most certainly I can have no right to come here as a representative from Virginia. But is it so? I think not. Sir, there certainly was once a State of Virginia. What has become of her? Has she gone up to the clouds? Has rebellion swallowed her down and abrogated her political existence? I hold, Mr. Speaker, that as a State she is, under our system of Government, indestructible; once a State always a State, until let out by the three-fourths' vote, or until successful revolution and general international recognition shall have animated into being a new nationality.

But so long as we profess to be governed by the Federal Constitution, we cannot extinguish a State. You may by arms subdue the people of a State to obedience to the Federal laws, and to their primary allegiance to the Federal Union; but you cannot, without violating the Constitution, and giving up the whole theory of our system and the whole theory of the rebellion, extinguish the State organization, because a State, in our system, occupies relation to, and is indeed a part and parcel of, the Federal Government, and is subject to and to be governed by the Constitution of the United States as the supreme law. And on this principle Virginia is yet an existing State, and I think I can make it apparent to the House in a very few words.

The Constitution expressly provides, and it is one of the wisest provisions in it, because without it the Government of the Union would not last a lustrium, would have been a rope of sand, a helpless organization without the power of self-preservation; I say the Constitution provides that it shall be in no respect changed without the concurrent assent of three-fourths of the States that formed it, or subsequently became parties to it. So that Virginia is still a member of the Union, owing primary allegiance to it, until she shall have been let out by the regular action of three-fourths of her sister

States. Now, sir, would not the making of the number of States one less in number be a change, and a radical change, in the Constitution? Would it not be a destruction, *pro tanto*, of the Constitution, the knocking away of one of its pillars? And if you can, without the joint action of three-fourths of the States, knock away one pillar, may you not knock away another and another, until the whole fabric shall have fallen into ruins? I say, therefore, that if you cannot “dot an *i* or cross a *t*” in the Constitution without having the consent of the constitutional majority of three-fourths of the States, *a fortiori*, you cannot perform the momentous act of ending, at your will, the life of a State.

Virginia, then, is somehow or somewhere a State, and to us, her loyal citizens, whose interest it is to keep posted about her, it is no difficult task to find her whereabouts, and to explain how she came where she is. You will find her sitting in her qualified sovereignty and in her loyalty about eight miles off, down in Alexandria. There she has a Governor and a Lieutenant Governor residing, and her Auditor, Treasurer, Secretary of State, and Attorney General. There she had recently, in actual session a convention to revise her constitution, and adapt it to the extraordinary posture of affairs induced by the rebellion. Very recently her Legislature was in regular session, and will shortly be again in extraordinary session. The people of the loyal counties that acknowledge this Government pay their taxes with punctuality and alacrity; and I am happy to inform the House and our rebel friends in Dixie that the treasury of this State, much as some people turn up their noses at her, is in a very prosperous condition—plenty of money, and not a very expensive Government to maintain. It would be most fortunate for the rebel Government if it could exhibit so flattering a balance-sheet, and I rather think that Uncle Sam himself might well be congratulated if his fisc were in so enviable a condition. She had some short time since two Senators in Congress; one, most lamentably sleeps in a premature grave; the other still sits and votes in the other wing of the Capitol. She has her civil authorities, judges, magistrates, sheriffs, coroners, clerks, constables, and all the officers of a regular Government, in full exercise of their respective functions. She has, then, all the external and apparent characteristics of a State; and the only other question that can arise in relation to her is, Is she *legitimately* a State? Just as much so, in my judgment, as a man is a human being, or a mule a brute.

Let history speak. Shortly after the old State, in evil hour, seceded from the Union, the people of the northwest who desired to live yet under the Union of their fathers, held a convention at Wheeling and put in operation what is usually known as the Wheeling Government of Virginia, and more recently as the restored Government of Virginia. This Government originated in the irresistible necessities of the loyal men, who could not follow their

State into the treason and ruin of secession ; and it was founded on the idea that the loyal people of the State constitute the State, or the political power of the State. From time to time other counties than those of the northwest attached themselves to this new organization, and among them the four that did me the honor to depute me their representative here. In course of time West Virginia became a separate State, but the counties in eastern and Piedmont Virginia that did not belong, geographically, to that division, and that did not of course desire to become a part of the new State, adhered to the restored Government, and such is their present position. If the Wheeling Government was a legal one, so is the present Government at Alexandria ; because the latter is an emanation from and a continuation of the Wheeling Government.

Then was the Wheeling Government a legal organization ? Undoubtedly it was ; and the argument is brief. Its legality rests on the firm ground of a decision of the highest judicial tribunal in the land, the Supreme Court of the United States.

In the case of *Luther vs. Borden*, the celebrated Dorr rebellion case, the Supreme Court ruled that where there are within the limits of an already existing State two conflicting political organizations, that it is the legal, rightful one, which is recognized by the Federal Executive. And the court decided (Chief Justice Taney delivering the opinion of the court) that when the recognition is officially made by an official act of the Federal Executive, there is no going behind it. President Tyler, by the act of proffering Federal troops to the Governor under the old charter Government of Rhode Island, recognized the latter Government (the Supreme Court say) as legitimate, and so it was ruled that the Dorr Government was a usurpation and a nullity.

Now, sir, after the Wheeling Government of Virginia was organized, the President of the United States recognized it in various ways. Through his heads of Departments he held official correspondence and business relations with Francis H. Pierpoint, Governor of the State under the Wheeling organization. As Governor, the latter was called on for troops, and furnished the quota of his State.

The recognition by the Federal Executive was all that could be properly required, but both Houses of Congress acknowledged the new Government as legitimate. The Senate admitted two Senators for it, though it embraced not more than one-fourth of the population and territory of the original State ; and this House recognized it by admitting to this floor three Representatives, my friends Messrs. Brown, Blair, and Whaley.

So the Wheeling Government, having been acknowledged by the Federal Executive, was a legal, constitutional Government, and the present restored Government, being a continuation of the Wheeling Government, is equally

rightful and lawful; and here I might dismiss the question. But I am unwilling to place the restored Government on any mere inferential basis. I say that it has been specifically recognized by the President of the United States subsequently to the formation of the new State of West Virginia, and since the present restored Government went into operation. To say nothing of other acts of recognition, Mr. Lincoln in his amnesty proclamation of the 8th of December last, expressly recognizes all "loyal State Governments that have all the while been maintained." Such a Government is that of the restored Government of Virginia. By him it is acknowledged a "loyal State Government all the while maintained," and therefore he excepted it from the general plan of reconstruction. Perhaps I had better quote his words, and here they are :

"To avoid misunderstanding, it may be proper to say that this proclamation, so far as it relates to State Governments, has no reference to States wherein loyal Governments have been all the while maintained."

Most evidently the President had in his mind this very restored Government of Virginia.

The case has been supposed in this House of a recognition by the Executive and non-recognition by one or both Houses of Congress, and then it has been asked, Where will a State Government be found? Sir, the answer is obvious. I hold that no recognition by either House of Congress is necessary. It is the Executive acknowledgement that stamps legality upon a State whose organizations conflict. Congress has no part nor lot in establishing the legitimacy. The Executive, and the Executive alone, can exercise the legalizing function. And when it does exercise that function, Congress itself cannot look behind the act done. It binds not only Congress, but every citizen of the United States.

Mr. Speaker, this restored Government of Virginia is as legitimate as the old charter Government of Rhode Island as against the Dorr Government, and as legitimate as that of Massachusetts or New York. And I put it to my friend from Massachusetts, how is it that a State can have two Senators in Congress and no Representatives? If Virginia is not a State, how can she have Senators in Congress; and if, as a State, she is entitled to Senators in Congress, is she not sufficiently a State to be entitled to Representatives also, and to her electoral vote likewise?

Mr. Speaker, in the name of the Union, do not ignore our young and may be feeble Government, by denying us representation in this body. We are not strong, sir, but we are none the less a State. Why, sir, the little State of Delaware, scarcely equal in territorial extent to a single county in Virginia, is, nevertheless, just as much a State as her empire sister, New York, just (to use the language of Vattel) as a "dwarf" is as much a man as a giant and the smallest republic as much a State as the greatest empire."

Sir, ought not our weakness to be even our protection? Suppose you see the brawny giant strike down to the earth the helpless dwarf. What emotion rises in your bosom but of execration of the cowardly act? And so, if the strong arm of this mighty Government shall fell to the earth this youthful State in her weakness, sweeping away her whole civil establishment, and substituting for it the chafing harshness of a pure military Government, and thus depriving her of what the Constitution guarantees to every State, a republican form of Government, what will be thought of us and said of us by the Christian nations of the earth? What will be our portion but an enlightened scorn? How will the thing read in history? Let the historian write it down: "Here was a State (it will be noted) that could not brook rebellion, and that set up for itself, to avoid the crime and penalties of rebellion, a nascent nationality struggling against treason, yet loving the old flag, and clinging with fond devotion to the blessed Government which is the 'bright particular' conception of human statesmanship, and which made us the freest, the happiest, and the greatest people on the globe, promising to be the nucleus for a grand gathering of future loyalty, until the whole length and breadth of the Ancient Dominion shall be brought under the gentle sway of peace, and back to allegiance to the best Government on earth; and yet a State like this, with promises and prospects like these, was, in her helplessness, struck down by the crushing arm of the all-powerful Government of the United States!" Shall we write any such chapter in the history of our country? No, sir; let us, as the President of the United States has done, recognize her as a "loyal organization all the while maintained;" and let us take her in, and keep her in, until her weakness becomes strength, and the song of redemption shall ring through all her ancient domain.

And I will venture to say, Mr. Speaker, that if it be really desired to bring back the "mother of States and statesmen," in all her ancient consequence, within the scope of reconstruction, you can in no way so surely accomplish the desideratum as by preserving unharmed her restored Government. It will be a sure nucleus for loyal formations. As the Federal armies advance and rear the standard of the Union, men who were forced into this cruel war against their will, and those that tire of it—having tasted its bitter fruits—and those who at heart sigh for the old flag and for peace, will hasten within the lines where they will find a double protection, the civil protection of their own accustomed municipal authorities, and the military protection of the United States. And I venture to express the opinion—and I do it very confidently—that the best possible system of reconstruction is that of restored State organization and gradual accretion. It will be far more effectual than the territorializing policy or the establishment of military Governments. There is not in it the harshness, the alienation, the embitterment, the rending, the crush, the crash, that will follow any system that waits for general

subjugation before it is applied. Its operation will be gentle and soothing, because gradual and restorative; and under it the people will find themselves almost imperceptibly back at their homes, and almost unconsciously remitted to their local governments and associations, and to the blessings of the Union of their fathers. Just as the amputation of a limb under the sedative influence of chloroform: the surgeons knife does its gashing work, and his saw its hackling, and the limb is off, and when the patient wakes up he feels no pain, and is unconscious that a limb is gone!

Mr. Speaker, we need no intervention of Congress to provide for us "a republican form of government." Spare us, we beseech you, all such graciousness. *Non tui auxilio, nec defensoribus istis!* Sir, whatever call there may be for the guarantying of republican forms of government in other States, there is no necessity that the United States perform that office for us. We call not on Hercules for help. Our own shoulders are at the wheel. We have already a republican form of government—one far more republican than any that Congress is likely to assign us; for give us one when you will, it will be more or less a military government, and no military government can be republican. Gentlemen of this people's branch of Congress, spare this government to us! It is our own handiwork—the emanation of our own free will and choice—the creation of our own native people, and not of strangers—a government grappled to us by the strong hooks of a thousand dear associations of nativity and home, and twice a thousand sweet memories, yet lingering around the broken vase, that will bid us look wishfully back to the Stars and Stripes, and "bring the light of other days around us." I invoke you again, Mr. Speaker, wrest not this our own cherished government from us! "Woodman! spare that tree."

Let us remember, unceasingly, one thing, that which should be written "in letters of living light" over the lintel of every American door and deep engraven on every American heart, that in this country Governments spring from the people, not the people from Governments.

And is it clear that Congress has any rightful authority to interfere aught with this Government of ours? Can it interpose by virtue of its obligation to guaranty to each State a republican form of Government? Mr. Madison, in the forty-third number of the Federalist, expressly declares that this obligation extends only to a guaranty against "aristocratic or monarchical innovations." Is there in our State government any aristocratic or monarchical feature? Have we any privileged classes, any titled nobility, any sceptered king? None. Then Congress cannot intermeddle. There is nothing to guaranty. As to us, it is *functus officio*. In this regard its "occupation is gone;" or, rather, it never had any.

And according to the same illustrious authority, having maintained continuously republican institutions, we have a right even to "claim the Fed-

eral guarantee." And this is just what we do. We demand your assurance of this our republican form of government. We claim protection, not extinction, at your hands. If you do not give us the protection you fail of your constitutional duty, and thrust us into revolution.

One more point and I have done. I am not unaware, Mr. Speaker, that whispers have been going around of my disloyalty. I am not unaware that calumny, guided by sordid meanness and black corruption, has essayed to "filch from me my good name" in this regard. I know it well. Villiany, sir, generally aims to cover up its footmarks, but sometimes, as if Providence were looking on to punish it, it does not put soil enough over to disguise them. In this matter, I have trailed its tortuous track, and traced out all its dark doings. By letters clandestinely used in 1861 in this Hall—so clandestinely that I never had sight of them, though I did learn casually the base purport of them—it made its stealthy effort to prevent me from taking my seat in this body that it might be filled on a new election by one of the arch-conspirators, who is unworthy to unloose the lachet of any Union man's shoes; and from that hour to this this puppy villiany has been barking at my heels, never once halting at hypocrisy, falsehood, or fraud. But this I will say, no man of honor and truth, and no one himself truly and disinterestedly loyal, ever impeached my loyalty. And I must say, Mr. Speaker, that if I am disloyal I have a very strange way of showing it. I do not deny, sir, that I made an effort to go with my State. Following the instincts that bind us all to the land under whose sod the bones of our ancestors rest, and where loved kindred live, I did endeavor to find arguments to reconcile me to secession. It was the struggle of a not uneventful life. Sir, I saw the bark of my State as she was about to set out on her perilous voyage. There she was, "all in the Downs." I watched her as she left her moorings and neared the pier to take in her freight of human life, and I gazed on the eager throng as it pressed down to the pier.

Among the first to tread her decks was my own and only son—a noble boy, around whom had gathered the honors of the university of his State, but who, alas! yielded to that fatal infatuation that a citizen must go with his State, right or wrong. Another look, and two unbearded youths, fresh from the college hall, my orphaned nephews, loved and cared for as my own children, followed that son. I looked again, and there stepped aboard as magnificent a specimen of mortality as ever eye rested on. And beside him stood one of queenly mien, his beautiful wife, my own dear child. And clinging to the mother was her cherub boy. There they all were; the son and the nephews were there, Eneas was there, and Creusa, and the boy Ascanius. But old father Anchises was not there. He stood upon the shore eyeing the flapping canvas, a struggle going on in his

bosom which loosened the very heart-strings, a struggle which I pray God may never wring my soul again—an agonizing struggle between instinct on the one hand and conscience on the other—a struggle whether I should follow the most loved on earth or stand by my country. But, blessed be God! conscience triumphed over instinct. I loved the stars and stripes better than my own flesh and blood!

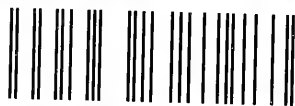
I disloyal, Mr. Speaker? I who have loved this Union from my boyhood, who have worshiped at its altars with as pure and deep a devotion as ever bowed down votary there; who (as I have said on other occasions) have all my life regarded the Constitution of the United States as “the best system of civil liberty that ever emanated from human hearts and human heads, and as the accumulated political wisdom of the world from the time of Magna Charta to 1789!” Disloyal to that Union which (I have often said) is connected in my mind with a thousand, and twice a thousand, glorious associations; with the wisdom that conceived and the blood that cemented it; with our prosperity and strength at home and our power and glory abroad; with that gallant flag that flings out the stars and stripes of our great country on every ocean, lake, and gulf, and sea; with that renown which exhibits her unconquered on a thousand battle-fields; with all the bright glories of the past and brighter hopes of the future—disloyal to a Union like this! No, sir, no!

“Tis slander;

Whose edge is sharper than the sword; whose tongue
Outvenoms all the worms of Nile; whose breath
Rides on the posting winds, and doth belie
All corners of the world: kings, queens, and States,
Maids, matrons, nay, the secrets of the grave.”



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